

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
(CENTRAL DIVISION)

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In re: \_\_\_\_\_ )

OM INDUSTRIES, INC., et al., \_\_\_\_\_ )

Debtors. \_\_\_\_\_ )  
\_\_\_\_\_ )

Ch. 7 Case Nos.  
07-40124-JBR through  
07-40127-JBR and 07-40129-JBR  
(Jointly Administered)

**MOTION OF THE MALDEN MILLS CREDITOR TRUST  
FOR ORDER AUTHORIZING DISTRIBUTION AND RELATED RELIEF**

Pursuant to 11 U.S.C. §§ 105, 362, 365 and 1142, the confirmed plan of reorganization (the “Plan”) entered in Malden Mills Industries, Inc.’s (“Malden Mills”) and its affiliated debtors’ (collectively, the “Reorganized Debtors”) 2001 Chapter 11 bankruptcy cases, Case Nos. 01-47214-JBR through 01-47217-JBR (Jointly Administered) (Bankr. D. Mass.) (the “2001 Cases”), the Confirmation Order in the 2001 Cases (as defined below) and the Creditor Trust Agreement (as defined below) entered into therewith, the Malden Mills Creditor Trust (“the Creditor Trust”) respectfully requests that the Court enter an order authorizing the final distribution from the Disputed Claims Reserve<sup>1</sup> established under the Plan. The Reorganized Debtors and the Creditor Trust had planned to make this distribution in or around early 2007. The distribution has been delayed, however, by the Reorganized Debtors’ intervening 2007 bankruptcy cases.

The Creditor Trust seeks authority, to the extent required under the Plan, under 11 U.S.C. § 362 or otherwise to distribute approximately \$3.5 million, held in two Disputed Claims Reserve accounts established by the Creditor Trust, and in a separate reserve account at Wells

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Plan.

Fargo Minnesota, N.A. and its predecessor in interest Trumbull Services, LLC (collectively, “Wells Fargo”) established by the Reorganized Debtors (the “Wells Fargo Account”). These funds will be allocated among (a) the Creditor Trust for final distribution to holders of Allowed Class 9 General Unsecured Claims in the 2001 Cases and for payment of expenses associated with the distribution and the administration of the Disputed Claims Reserve; (b) General Electric Capital Corporation, as Agent for the Senior Lenders (“GE Capital” or the “Agent”) for distribution to holders of Class 7 Senior Secured Lender Deficiency Claims in the 2001 Cases; (c) Finova Capital Corporation (“Finova”); and (d) the Reorganized Debtors (on account of, among other things, overfunding of the Disputed Claims Reserve and accrued interest), to be remitted directly to the Agent pursuant to the GE Capital Settlement Agreement (defined below).

For the reasons set forth below, the Creditor Trust also requests that the Court enter an order directing Wells Fargo to (a) transfer all funds held in the Wells Fargo Account to the Disputed Claims Reserve to be distributed in accordance with the terms of the Plan and as set forth herein; and (b) provide to the Creditor Trust all information concerning the Wells Fargo Account necessary to facilitate such distribution, including detailed records for the Wells Fargo Account, mailing addresses for creditors and completed W-9 Forms received from creditors.

The Agent and the Chapter 7 Trustee appointed in the above-captioned bankruptcy cases (the “Chapter 7 Trustee”) both support this motion, as indicated by the assents below.

In further support of this motion, the Creditor Trust states as follows:

### **Background and Procedural History**

1. On November 29, 2001, the Reorganized Debtors filed voluntary petitions under Chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in this Court.

2. On August 14, 2003 (the “Confirmation Date”), the Court entered an order (the “Confirmation Order”) confirming the Plan. On October 17, 2003, the Plan became effective by its terms (the “Effective Date”).

3. The Creditor Trust was established for the benefit of all holders of General Unsecured Claims pursuant to Article VI of the Plan, paragraphs 35 and 36 of the Confirmation Order, and the Malden Mills Creditors Agreement of Trust, dated October 17, 2003 (the “Creditor Trust Agreement”). Under Section 6.3 of the Plan, the Creditor Trust is responsible for administering all Trust Assets and making distributions to the holders of General Unsecured Claims in accordance with the terms of the Plan.

4. On the Effective Date, a Disputed Claims Reserve was established to hold cash and stock consideration on account of Disputed Claims, for ultimate distribution to all classes of creditors, including claimants in Class 7 (holders of Senior Lender Deficiency Claims) and Class 9 (holders of General Unsecured Claims). As required under Section 7.4 of the Plan, the Creditor Trust has maintained the Disputed Claims Reserve. Currently, there is a total of \$2,252,977 in principal and approximately \$262,680 in interest held in the two Disputed Claims Reserve accounts.<sup>2</sup> On the Effective Date, funds were also sent to Wells Fargo for distribution to creditors under the Plan.

5. On information and belief, on or about October 20, 2003, the Reorganized Debtors and Wells Fargo entered into a Custodian and Disbursing Agreement (the “Wells Fargo Agreement”) pursuant to which, among other things, (a) the Wells Fargo Account was

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<sup>2</sup> As of March 5, 2009, the first Disputed Claim Reserve account held \$2,095,387 in principal and \$251,408 in interest and the second Disputed Claim Reserve account held \$157,590 in principal and \$11,272 in interest. The second account was originally set up to reserve for Disputed Claims that were improperly expunged from the claims register prior to the Effective Date by the Reorganized Debtors’ claims agent, The Trumbull Group f/k/a Trumbull Services, LLC.

established to reserve cash consideration on account of General Unsecured Claims that were Allowed as of the Effective Date; and (b) Wells Fargo was to administer distributions to holders of undisputed claims. On information and belief, as of June 15, 2007, \$679,027 in principal and \$83,457 in interest was held in the Wells Fargo Account.<sup>3</sup> Wells Fargo has advised the Creditor Trust that the Wells Fargo Agreement was rejected in the Reorganized Debtors' above-captioned 2007 bankruptcy cases and, therefore, Wells Fargo is no longer obligated to provide the services set forth in the Wells Fargo Agreement. Additionally, Wells Fargo has taken the position that because the Creditor Trust is not a party to the Wells Fargo Agreement, Wells Fargo will not disclose to the Creditor Trust any information concerning the Wells Fargo Account, including account balances, amounts of principal and interest, undeliverable and unclaimed distributions ("Voided Distributions"), distributions withheld on account of creditors' failure to provide taxpayer identification numbers ("TINs") and the names and mailing addresses of the creditors entitled to receive distributions from the Wells Fargo Account.

6. In connection with the Plan solicitation process, holders of Class 9 General Unsecured Claims were given two distribution options: The first, known as the "Cash-Out Option," entitled the holder to a guaranteed dividend of 25% of its Allowed Claim. See Plan, § 4.9.2. The second, known as the "Non Cash-Out Option," entitled the holder to its pro rata share of (i) cash proceeds from a lawsuit arising from the 1995 fire at the Malden Mills' factory in Lawrence, Massachusetts (the "Fire Litigation Proceeds"); (ii) cash proceeds from Avoidance Actions (including a portion of the Accordia Avoidance Litigation, as that term is defined in the

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<sup>3</sup> To the extent that there is a difference (either greater or lesser) between the actual value of the Wells Fargo Account and the \$762,484 in principal and interest that was reported as of June 15, 2007, that difference will alter, on a dollar-for-dollar basis, the estimated \$296,000 in excess proceeds to revert to the Reorganized Debtors as set forth in paragraph 22.

Plan, see Plan §§ 4.7.1, 4.9.1); and (iii) common stock and preferred stock in the reorganized Malden Mills. See Plan, § 4.9.1.

7. On the Effective Date, the Reorganized Debtors funded, inter alia, the two Disputed Claims Reserve accounts and the Wells Fargo Account in amounts sufficient to pay the required distributions on all then asserted Class 9 Cash-Out and Non Cash-Out Claims as if those claims were allowed as of the Effective Date. Those accounts were funded through a combination of a portion of the Fire Litigation Proceeds and a draw-down on the Reorganized Debtors' post-Effective Date revolving line of credit. In addition, on the Effective Date, payments were made to the Agent from the Fire Litigation Proceeds to pay the required distributions to holders of Class 7 Claims.

8. Following the Effective Date, the distribution process was managed for the most part by the Reorganized Debtors, with oversight by the Creditor Trust. Distributions to the holders of Allowed Claims were made periodically by the Reorganized Debtors. Wells Fargo was responsible for administering these distributions and money was released by the Creditor Trust from the Disputed Claims Reserve accounts to fund those payments.

9. The Reorganized Debtors and the Creditor Trust made a number of distributions to holders of Allowed Class 9 Claims. Holders of Allowed Class 9 Cash-Out Claims have received their full cash dividend of 25%. As a result of these interim distributions, holders of Class 9 Cash-Out Claims have been paid all consideration to which they are entitled under the Plan. Holders of Allowed Class 9 Non Cash-Out Claims have to date received cash distributions equal to 10% of their Allowed Claims.

10. All Claims which were Disputed Claims as of the Effective Date have been resolved, through litigation or settlement, and either allowed, disallowed, allowed in a different amount or reclassified to the proper class of Claims.

11. As a result of the completion of the claims objection process, including the disallowance or compromise of many Class 9 Claims, holders of Allowed Class 9 Non Cash-Out Claims are entitled to a further distribution of cash. Moreover, because the aggregate amount of Allowed Claims is less than the amount reserved for on the Effective Date, there are excess funds in the two Disputed Claims Reserve accounts and the Wells Fargo Account that need to be reallocated among the Reorganized Debtors, the Agent (on behalf of holders of Class 7 Claims) and the Creditor Trust (for the benefit of holders of Class 9 Claims).

12. On January 9, 2007, the 2001 Cases were closed. On January 10, 2007, the Reorganized Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “2007 Cases”). On January 12, 2007, the 2001 Cases were reopened and the 2007 Cases were transferred to this District.

13. On March 5, 2007, the 2001 Cases were closed for the second time. Following this closing of the 2001 Cases, the Creditor Trust has continued to exist under the terms of the Creditor Trust Agreement. See Creditor Trust Agreement, Article XII (providing, among other things, that the Creditor Trust shall terminate upon liquidation of all Trust Assets, payment of all fees, expenses and taxes of the Creditor Trust and final distribution to its beneficiaries).

14. On March 30, 2007, the 2007 Cases were converted to cases under Chapter 7 of the Bankruptcy Code, after which the Chapter 7 Trustee was appointed.<sup>4</sup>

15. The Reorganized Debtors had planned to make the final distributions from the Wells Fargo Account and the Disputed Claims Reserve in early 2007. Unfortunately, the intervening Chapter 11 petitions in the 2007 Cases delayed that process. Following the conversion of the 2007 Cases, the Creditor Trust and its professionals took over responsibility from the Reorganized Debtors for the entirety of the claims distribution and administration process.

16. On June 14, 2007, the Chapter 7 Trustee filed with this Court a Motion for the Entry of an Order Approving Compromise Settlement Between the Chapter 7 Trustee and General Electric Capital Corporation (the “GE Capital Settlement Motion”). Paragraph 6(b) of the settlement agreement attached as Exhibit A to the GE Capital Settlement Motion (the “GE Capital Settlement Agreement”) provides, in pertinent part, that all funds distributed by the Creditor Trust that the Reorganized Debtors are entitled to receive pursuant to the Plan shall be remitted by the Creditor Trust directly to GE Capital as Agent for the Senior Lenders. On July 11, 2007, the Court entered an order granting the GE Capital Settlement Motion.

### **Jurisdiction and Venue**

17. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(a) and 157(a). In addition, under Section 12.1(j) of the Plan and Paragraph 54(k) of the Confirmation Order, the Court retained jurisdiction to enter any order necessary to enforce the terms of the Plan. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

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<sup>4</sup> On May 11, 2007, the Creditor Trust filed administrative proofs of claim in the 2007 Cases in the amount of \$155,173 on account of legal fees and expenses incurred in the course of its making substantial contributions to the 2007 Chapter 11 Cases (collectively, the “Creditor Trust Administrative Claim”). As set forth in the separate stipulation and proposed order, filed contemporaneously herewith, the Chapter 7 Trustee, GE Capital and the Creditor Trust stipulate and agree to the allowance in its entirety of the Creditor Trust Administrative Claim.

**Relief Requested**

18. The Creditor Trust seeks authority, to the extent required under the Plan, 11 U.S.C. § 362 or otherwise, to distribute all cash held in the Disputed Claims Reserve, including all cash from the Wells Fargo Account, in the manner set forth in paragraphs 21-23 below. After giving effect to such distribution, the Disputed Claims Reserve will cease to exist and the Wells Fargo Account will have no further cash in it. The Creditor Trust anticipates making a final distribution to holders of Allowed Class 9 Non Cash-Out Claims. The Creditor Trust estimates that final distribution will be between 7 and 10% of each Allowed Claim, for a total cash distribution to Class 9 Non Cash-Out creditors of 17-20%.<sup>5</sup> This distribution also will include a distribution on account of proceeds from Avoidance Actions prosecuted by, or on behalf of, the Creditor Trust.

19. Section 7.1.1 of the Plan provides that Voided Distributions (i.e., distributions that are either undeliverable or not negotiated by the payee) shall revert to the Reorganized Debtors or the Creditor Trust after a one-year waiting period. Section 6.9 of the Plan provides that Claims (including all right to payment from the Creditor Trust) of creditors who fail to provide TINs to the Creditor Trustees are deemed waived and the funds that otherwise would be distributed to such creditor shall be made available for further distribution pro rata to holders of General Unsecured Claims. On information and belief, Wells Fargo has made multiple requests for TINs from these creditors. Accordingly, the Creditor Trust requests that all Voided Distributions and

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<sup>5</sup> Pursuant to the Plan, holders of Class 7 Senior Secured Deficiency Claims and Class 9 Non Cash-Out Claims were to receive common stock and preferred stock in the reorganized Malden Mills. See Plan, §§ 4.7.1, 4.9.1. As a result of the 2007 Cases, however, that stock is worthless and its distribution would result in unnecessary delay and expense. Accordingly, no stock will be distributed.

all Claims waived due to creditors' failure to provide TINs revert to the Creditor Trust in accordance with the terms of the Plan and as set forth herein.

20. The Creditor Trust has worked with its attorneys at Foley Hoag LLP and its financial advisors at Mesirow Financial Holdings, Inc. ("Mesirow Financial") to determine the amount of final distributions. That work was based in large part on the claims register maintained by the Reorganized Debtors' attorneys at Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. The proposed final distribution from the Disputed Claims Reserve has been reviewed by and vetted with the attorneys and financial advisors to the Agent.

21. The Creditor Trust anticipates distributing the funds held in the Disputed Claims Reserve (including funds transferred thereto from the Wells Fargo Account) as follows:

(a) \$392,539 to the Creditor Trust on behalf of, and for distribution to, holders of Allowed Class 9 Non Cash-Out Claims on account of their final pro rata share of the Fire Litigation Proceeds. This sum is comprised of (i) \$364,085 (to be distributed to holders of Allowed Class 9 Non Cash-Out Claims who were not employees of Malden Mills) and (ii) \$28,454 (to be distributed to holders of Allowed Class 9 Non Cash-Out Claims who were pre-petition employees of Malden Mills).

(b) \$423,102 to the Creditor Trust on behalf of, and for distribution to, holders of Allowed Class 9 Non Cash-Out Claims on account of their share of funds recovered in connection with the Accordia Avoidance Litigation, which amount was deposited in the Wells Fargo Account on the Effective Date by the Reorganized Debtors for distribution to holders of undisputed Class 9 Non Cash-Out Claims and to date has not been distributed.

(c) \$485,981 to revert to the Creditor Trust for distribution in accordance with the Plan. This sum is comprised of (i) \$451,425 on account of withheld distributions to holders of Allowed Class 9 Non Cash-Out Claims who, despite, on information and belief, multiple requests for TINs by Wells Fargo, have failed to provide TINs as required under the Plan, see Plan, § 6.9;<sup>6</sup> (ii) \$29,013 on account of Class 9 creditors' pro rata share of withheld distributions to holders of Allowed Class 9 Cash-Out Claims who similarly failed to provide TINs to the Creditor Trust; see id., (iii) \$4,545 on account of Class 9 creditors' pro rata share of Voided Distributions to holders of Allowed Class 9 Non Cash-Out Claims, see id., §§ 7.1.1, 7.1.5, 7.4.3; and (iv) \$998 on account of the Creditor Trust's pro rata share of Voided Distributions to holders of Allowed Class 9 Cash-Out Claims. See id.

(d) \$725,038 to the Agent for further distribution to holders of Allowed Class 7 Senior Lender Deficiency Claims. This sum is comprised of (i) \$695,898 on account of the pro rata share of the Fire Litigation Proceeds to which Class 7 creditors are entitled under Section 4.7.1 of the Plan and (ii) \$29,140 on account of Class 7 creditors' pro rata share of Voided Distributions to General Unsecured Creditors. See Plan §§ 4.7, 7.1.1, 7.1.5.

(e) \$35,432 to the Agent on account of Finova's additional share of the pool available to creditors that elected the Cash-Out Option pursuant to Sections 4.7.2 and

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<sup>6</sup> The Creditor Trust intends to make one last effort to obtain TINs from those Class 9 creditors who have failed to provide them. Insofar as, on information and belief, multiple attempts previously were made to obtain such TINs, all Claims (including all rights to payment from the Creditor Trust) of creditors that again fail to provide TINs will be deemed to have been waived by such creditors pursuant to paragraph 6.9 of the Plan. The 180-day period between the first request for TINs and the time when Claims are deemed to have been waived, as provided in paragraph 6.9, does not apply to this final TIN request.

4.9.3 of the Plan (which provided that holders of Allowed Class 7 Claims could elect the Cash-Out Option if the election of the Cash-Out Option by holders of General Unsecured Claims did not exceed 50% in dollar amount of all General Unsecured Claims that were Allowed as of the Confirmation Date). See Plan § 7.1.1.

(f) \$784,685, plus any additional interest accrued in the Wells Fargo Account after June 15, 2007, and in the two Disputed Claims Reserve accounts from March 5, 2009 through the date of completion of this distribution, to revert to the Reorganized Debtors. The \$784,685 is comprised of (i) \$413,483 on account of overfunding by the Reorganized Debtors of the so-called “Cash-Out Differential” under the Plan; (ii) \$262,680 in interest accrued in the two Disputed Claims Reserve accounts as of March 5, 2009, see Plan, § 7.4.2 (providing that all interest accrued on cash invested by the Reorganized Debtors is property of the Reorganized Debtors); (iii) \$83,457 in interest that the Creditor Trust understands to have accrued in the Wells Fargo Account through June 15, 2007, see id.; (iv) \$24,232 on account of the Reorganized Debtors’ pro rata share of withheld distributions to holders of Allowed Class 9 Cash-Out Claims who failed to provide TINs, see id., § 6.9;<sup>7</sup> and (v) \$883 on account of the Reorganized Debtors’ pro rata share of Voided Distributions to holders of Allowed Class 9 Cash-Out Claims. See id., §§ 7.1., 7.1.5, 7.4.3. Under the terms of the GE Capital Settlement Agreement, all funds to be distributed from the Wells Fargo Account and Disputed Claims Reserve to the Reorganized Debtors will be remitted directly to the Agent.

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<sup>7</sup> The money that would revert to the Reorganized Debtors on account of the failure to provide TINs shall be held in the Disputed Claims Reserve pending the one last effort described in footnote 6.

(g) Approximately \$135,000 to the Creditor Trust to pay the professional fees and expenses incurred by Foley Hoag LLP and Mesirow Financial in connection with the claims distribution and administration process.<sup>8</sup>

22. After making the distributions in sub-paragraphs 21(a) through (g), above, there will be a surplus in the Disputed Claims Reserve of approximately \$296,000, likely on account of an over-reserve on the Effective Date.<sup>9</sup> The Creditor Trust seeks authority to (i) promptly remit all but \$75,000 of the surplus to the Agent in accordance with the GE Capital Settlement Agreement; (ii) use a portion of the \$75,000 to pay for the remaining costs of administering this distribution (estimated to be \$30,000 absent unforeseeable circumstances); and (iii) following completion of distributions (estimated to take 4 to 6 months) remitting the remaining balance of the \$75,000 to the Agent in accordance with the GE Capital Settlement Agreement.

23. Subsequent to making the final distribution, the Creditor Trust anticipates that a percentage of distribution checks will either be returned as undeliverable or will otherwise not be negotiated (the “Unclaimed Funds”). In light of the fact that all such claimants should have already received mailings, and the amount of time that has elapsed, the Creditor Trust requests that any checks that are returned as undeliverable and any checks that are not cashed within 90 days revert immediately to the Creditor Trust for distribution to General Unsecured Creditors.

24. Finally, because the Creditor Trust is not a party to the Wells Fargo Agreement, and because that agreement apparently was rejected in the Reorganized Debtors’ 2007 Cases, the

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<sup>8</sup> This sum does not include any of the professional fees and expenses comprising the Creditor Trust Administrative Claim.

<sup>9</sup> The amount of this surplus was calculated by subtracting the amounts distributed, as set forth in paragraph 21 above, from the total amount of principal and interest in the two Disputed Claims Reserve accounts, including all funds transferred thereto from the Wells Fargo Account, as discussed in paragraph 24 below.

Creditor Trust cannot distribute any funds remaining in the Wells Fargo Account. Nor does the Creditor Trust know exactly how much is in that account. Accordingly, pursuant to Sections 105(a) and 1142 of the Bankruptcy Code and Section 12(j) of the Plan, the Creditor Trust requests that this Court enter an order directing Wells Fargo to (a) transfer all funds in the Wells Fargo Account to the Disputed Claims Reserve to be distributed in accordance with the terms of the Plan in the manner described herein; and (b) furnish the Creditor Trust with all information concerning the Wells Fargo Account necessary to facilitate the distribution of the funds transferred therefrom, including all account records for the Wells Fargo Account, detailed distribution information (by creditor), any mailing addresses for creditors and all W-9 Forms received from creditors.

WHEREFORE, the Creditor Trust respectfully requests that this Court enter an order in the form submitted herewith (i) authorizing the Creditor Trust to reallocate in accordance with the terms of the Plan and as set forth herein all funds from Voided Distributions and Claims deemed to have been waived due to creditors' failure to provide TINs; (ii) authorizing the distribution of cash in the Disputed Claims Reserve (including all funds transferred thereto from the Wells Fargo Account) as set forth herein; (iii) authorizing the Creditor Trust to apply a portion of the surplus in the Disputed Claims Reserve to pay for reasonable costs incurred in connection with this distribution and to remit the remaining portion of said surplus to the Agent; (iv) authorizing the reversion to the Creditor Trust of all Unclaimed Funds for administration in accordance with the terms of the Plan and consistent with the relief requested herein; (v) directing Wells Fargo to transfer all funds held in the Wells Fargo Account to the Disputed Claims Reserve and to provide to the Creditor Trust all information concerning the Wells Fargo

Account necessary to facilitate the distribution of said funds; and (vi) granting such other and further relief as is just and proper.

Dated: March 18, 2009

Respectfully submitted,

THE MALDEN MILLS CREDITOR TRUST,

By its attorneys,

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
(CENTRAL DIVISION)

	)	
In re:	)	Ch. 7 Case Nos.
	)	07-40124-JBR through
OM INDUSTRIES, INC., et al.,	)	07-40127-JBR and 07-40129-JBR
	)	(Jointly Administered)
Debtors.	)	
	)	

**ORDER GRANTING MOTION OF THE MALDEN MILLS CREDITOR TRUST  
FOR ENTRY OF ORDER AUTHORIZING  
FINAL DISTRIBUTION AND RELATED RELIEF**

Upon consideration of the Motion of the Malden Mills Creditor Trust for Entry of Order Authorizing Distribution and Related Relief, dated March 18, 2009 (the "Motion"), after due deliberation and sufficient cause having been shown; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief requested;

**THE COURT HEREBY ORDERS, ADJUDGES AND DECREES:**

1. The Motion is GRANTED and APPROVED in all respects.
2. The Malden Mills Creditor Trust (the "Creditor Trust") is authorized to reallocate and distribute, in accordance with the terms of the Plan and as set forth in the Motion, all funds derived from (a) distributions that previously were undeliverable or otherwise not negotiated and (b) Claims deemed to have been waived due to creditors' failure to provide tax-payer identification numbers.
3. The Creditor Trust is authorized to distribute all cash held in the Disputed Claims Reserve (including funds transferred thereto from the Wells Fargo Account) in the manner set forth in the Motion.

4. The Creditor Trust is authorized to pay from the surplus in the Disputed Claims Reserve its reasonable costs incurred in connection with this distribution and to remit the remaining portion of said surplus to the Agent.

5. All funds distributed by the Creditor Trust in accordance with paragraphs 21-22 of the Motion which are returned to the Creditor Trust as undeliverable or otherwise not negotiated within 90 days of mailing by the Creditor Trust shall revert to the Creditor Trust and the Creditor Trust is authorized to reallocate and distribute such funds in accordance with the terms of the Plan and in a manner consistent with the relief requested in the Motion.

6. Wells Fargo Bank Minnesota, N.A. is directed to transfer all funds from the reserve account established by the Reorganized Debtors pursuant to the Custodian and Disbursing Agreement, dated October 20, 2003, and to provide to the Creditor Trust and Mesirow Financial Holdings, Inc. all information concerning such account necessary to facilitate the distribution, including all account records for the Wells Fargo Account, detailed distribution information (by creditor), any mailing addresses for creditors and all W-9 Forms received from creditors.

Dated: March \_\_, 2009

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Hon. Joel B. Rosenthal, U.S. Bankruptcy Judge